***THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

+ WRIT PETITION No.33338 of 1998

% Dated 10.07.2007

M/S Bright Industries Corporation,
Rep., by its Proprietrix Smt.Rajeswari Malini.

… Petitioner.

VERSUS

$ Employees State Insurance Corporation,
Regional Office, A.P., rep., by its Assistant Deputy
Regional Director/Authorised Officer,
5-9-23, Hill Fort Road, Hyderabad and another.

… Respondents.

! Counsel for Petitioner: M/s A.K.Jayaprakash Rao

^Counsel for Respondents: Sri B.G.Ravindra Reddy

<GIST:

>HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.33338 of 1998

Dated:30.07.2007

Between:

M/S Bright Industries Corporation,
Rep., by its Proprietrix Smt.Rajeswari Malini.

..... PETITIONER

And:

Employees State Insurance Corporation,
Regional Office, A.P., rep., by its Assistant Deputy
Regional Director/Authorised Officer,
5-9-23, Hill Fort Road, Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.33338 of 1998

ORDER:

Petitioner, which is carrying on business in manufacturing wire mesh and wire nettings, filed the instant writ petition questioning the proceedings dated 02.11.1998 issued by the first respondent claiming an amount of Rs.7,446/- and directing the second respondent to recover the same from the petitioner.

Petitioner states that it employed less than ten employees in its unit. The Inspector of the respondent-Corporation visited the premises of the petitioner and filed prosecution case No.87 of 1997 before the Special First Class Magistrate/E.I. Court and Chairman, Industrial Tribunal-I, Hyderabad, for non-payment of contribution of Rs.6,353/- in respect of its employees from September 1994 to March 1995, and ultimately petitioner was acquitted by the E.I., Court, by judgment dated 03.07.1998, observing that petitioner employed less than ten persons in its establishment, and as such the provisions of Employees State Insurance Act, 1948 (for short "the Act") are not applicable. Despite the said finding, the first respondent addressed a letter dated 02.11.1998 to the second respondent directing to recover an amount of Rs.7,446/- from the petitioner, and a copy of the said letter has been sent to the petitioner. Aggrieved thereby, this writ petition is filed.

A counter-affidavit is filed on behalf of the respondents, wherein it is stated that the petitioner, without exhausting the alternative remedy as provided for under Section 75 of the Act, filed the present writ petition.

Heard the learned counsel for both the parties.

Section 75 of the Act deals with the matters to be decided by Employees Insurance Court, and definitely the dispute in this matter is one of such disputes, which, in fact, shall be decided by the Employees Insurance Court. But as the dispute between the parties is already decided by the competent Employees Insurance Court i.e, Special I Class Magistrate, Judge, E.I. Court and Chairman, Industrial Tribunal-I, Hyderabad, in Prosecution Case No.87 of 1997, it cannot be said that the petitioner has to once again go to the very same Court for redressal of its grievance. Of course, the contention of the learned counsel for the respondents is that the said judgment dated 03.07.1998 is in a Criminal Case and the said finding by a criminal court is not binding and this matter has to be decided afresh. I am not in agreement with the said contention. In the judgment in Prosecution Case No.87 of 1997, the Presiding Officer has given a categorical finding that there is absolutely no material on record to hold that the prosecution is able to prove that the accused (petitioner) employed 10 or more persons in the manufacturing process conducted with the aid of the power. In the normal parlance, the finding given by a criminal court may not be binding on other courts, but in a case of this nature, particularly when the E.I., Court is conferred with both the powers to decide all the issues under Section 75 of the Act, and the Court has given a finding that the petitioner has not employed more than 10 persons, which is a requirement under Section 2(12) of the Act, it may be a futile exercise again to say that the matter requires to be decided by a competent E.I., Court.

For the foregoing reasons, this Court is of the view that the proceedings dated 02.11.1998 issued by the first respondent are liable to be quashed. Accordingly, the writ petition is allowed and the proceedings issued by the first respondent, dated 02.11.1998, are hereby quashed. There shall be no order as to costs.

30.07.2007

Note: L.R. copy to be marked.

(B/o)

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